DECISION MEMORANDUM

TO: **COMMISSIONER KJELLANDER**
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: **SCOTT WOODBURY**

DATE: **AUGUST 12, 2005**

SUBJECT: **CASE NO. IPC-E-05-22 (Idaho Power)**
INTERLOCUTORY ORDER NO. 29839 AND RELATED PETITIONS OF WINDLAND INCORPORATED

On June 17, 2005, Idaho Power Company (Idaho Power; Company) filed a Petition with the Idaho Public Utilities Commission (Commission) requesting a temporary suspension of the Company's obligation under Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and various Commission orders, to enter into new contracts to purchase energy generated by qualifying wind-powered small power production facilities (QFs). A public hearing and oral argument on the narrow issue of the requested temporary suspension of Idaho Power's PURPA obligation to enter into contracts to purchase energy generated by wind powered small power production facilities (the need for and appropriateness of such relief and related procedural and jurisdictional matters) and/or the Commission's power to suspend the PURPA avoided cost rate for wind facilities was held on July 22, 2005 in Boise, Idaho. On August 4, 2005, the Commission issued Order No. 29839 in Case No. IPC-E-05-22. The Commission's Order reduces the published rate eligibility cap for non-firm wind projects to 100 kW, requires individual negotiation for larger wind QFs, establishes criteria for assessing QF contract entitlement and discusses further procedure. The Commission's Order, in part, contained the following findings:

> Based on the record established in this case the Commission finds reason to believe that wind generation presents operational integration costs to a utility different from other PURPA qualified resources. *We find that the unique supply characteristics of wind generation and the related integration costs provide a basis for adjustment to the published avoided cost rates, a*

calculated figure that may be different for each regulated utility. The procedure to determine the appropriate amount of adjustment, we find, and the identification of what studies, if any, need to be performed to provide such a number is a matter appropriate for further proceedings. The record reflects that a wind integration study if required may take six months to develop. Idaho Power has requested a suspension period from six to nine months.

The Commission is presented in this case with a Company proposal to suspend its obligation to purchase and a Staff proposal to reduce the published rate eligibility cap for qualified intermittent wind projects from 10 aMW to 100 kW and to require individual negotiation for larger wind projects. Exempt from Staff's proposal are those wind projects that are offered on a firmed basis. The Commission finds Staff's proposal to be a reasonable approach. In doing so we find that under PURPA standard rates for purchases need be published only for QFs 100 kW and smaller. Reference 18 C.F.R. Section 292.304(c)(1). We find that the published avoided cost rate for other generation types is not being challenged in this case. We find no reason to cast the net any further than necessary and find it reasonable to limit our Order to intermittent wind QFs only. Reference 18 C.F.R. Section 292.304(c)(3)(ii). We find our action in reducing the cap for published rates for wind projects to be just and reasonable to the electric consumers of Idaho Power and in the public interest. Reference 18 C.F.R. Section 292.304(a)(1)(i). This Commission finds that it has continuing authority to review PURPA rates in order to protect the public interest.

It was suggested in briefing and testimony that the 90/110 performance band established in Order No. 29632 sufficiently dealt with the firm versus non-firm characteristics of wind and that no further adjustment is needed. In moving forward in this case we find that the average monthly generation requirement that we established in Order No. 29632 may not capture the integration requirements and operational demands placed on the utility by intermittent generation and that the integration costs associated with same may not be fully reflected in the published avoided cost rates. In moving forward with this case we do so in recognition that no utility is required to pay more than its avoided cost for QF purchases. PURPA § 210(b).

Idaho Power has a federal requirement to purchase qualifying wind generation pursuant to PURPA, and the implementing rules and regulations of the Federal Energy Regulatory Commission (FERC) and this Commission. The Commission recognizes that Idaho Power is also seeking to purchase wind generation by way of a separate Request for Proposal (RFP) process. The Company's RFP conforms with a resource acquisition strategy set forth in its 2004 Integrated Resource Plan. We note of significance that an Integrated Resource Plan is a living document and as such it is subject to change as new information becomes available or as circumstances change.

> Bids in the Company's 2005 wind RFP were submitted in March 2005. The Commission finds no persuasive evidence that the RFP bids were affected or influenced by the published avoided cost rate. While the Commission is not directing that the Company proceed in any particular manner with its RFP, we nevertheless encourage the Company to bring the RFP process to conclusion.
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> At the beginning of hearing on July 22, the Commission adjourned to allow the parties to explore whether any consensus could be reached regarding those PURPA projects that were in various stages of negotiation with Idaho Power. The parties were unable to reach consensus. Accordingly, this Commission finds it reasonable to establish the following criteria to determine the eligibility of PURPA qualifying wind generating facilities for contracts at the published avoided cost rates. For purposes of determining eligibility we find it reasonable to use the date of the Commission's Notice in this case, i.e., July 1, 2005. For those QF projects in the negotiation queue on that date, the criteria that we will look at to determine project eligibility are: (1) submittal of a signed power purchase agreement to the utility, or (2) submittal to the utility of a completed Application for Interconnection Study and payment of fee. In addition to a finding of existence of one or both of the preceding threshold criteria, the QF must also be able to demonstrate other indicia of substantial progress and project maturity, e.g., (1) a wind study demonstrating a viable site for the project, (2) a signed contract for wind turbines, (3) arranged financing for the project, and/or (4) related progress on the facility permitting and licensing path.

On August 5, 2005, Windland Incorporated (Windland) filed a Petition for Reconsideration of Commission Order No. 29839. Reference *Idaho Code* § 61-626; Commission Rule of Procedure 331.01. Windland's Petition for Reconsideration should be read in conjunction with Windland's August 10 Petition requesting that the Commission treat as final that part of Order No. 29839 establishing criteria to determine the eligibility of PURPA qualifying wind generating facilities for contracts at the published avoided cost rates. Reference Commission Rule of Procedure 323.03. Windland requests that the Commission reconsider its decision regarding "grandfathering." After such reconsideration, Windland requests that the Commission amend its Order to prohibit the "grandfathering" of any wind QF projects to the published avoided cost rate established by Order No. 29646, a rate that Windland contends the Commission found to be "too high for wind QFs" (see italicized language above), and that therefore Windland alleges is unjust and unreasonable.

On August 9, 2005, Windland filed a Petition for Stay of the Commission's Order No. 29839 until such time as Windland's Petition for Reconsideration regarding

"grandfathering" is resolved and/or until such time as the Commission issues an Order regarding the law governing grandfathering and the parties relationships concerning wind powered QF contracts. Reference Commission Rule of Procedure 324.

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The Commission's Order No. 29839 was not designated as a final Order and by Commission Rules is therefore an Interlocutory Order. Reference Commission Rule of Procedure 321.01 (Interlocutory Orders) and 323.01 (Final Orders). Pursuant to Rule 323.03 whenever a party believes that an Order not designated as a final Order according to the terms of the Commission's Rules should be a final Order, the party may petition the Commission to designate the Order as final. If an Order is designated as final after its release, its effective date for purposes of reconsideration or appeal is the date of the Order of designation. Once designated as final, the statutory timelines for petitions for reconsideration and cross-petitions are triggered. Reference *Idaho Code* § 61-626; RP 331.01 Petition for Reconsideration (21 days) and .02 Cross-Petition for Reconsideration (7 days). Statutory timelines cannot be adjusted.

Any person may petition the Commission to stay any Order, whether interlocutory or final. Reference Commission Rule of Procedure 324. Windland's Petition for Stay was filed August 9, 2005. Answers to petitions are timely under Commission Rule of Procedure 57.02 if filed within 21 days, unless the Commission modifies the time.

Windland has filed three Petitions regarding Interlocutory Order No. 29839. http://www.puc.idaho.gov/internet/cases/summary/IPCE0522.html. Does the Commission find it reasonable to designate that portion of the Commission's Interlocutory Order that established criteria for determining contract entitlement and eligibility of certain wind QFs to the published rates established in Order No. 29646 as a Final Order? Does the Commission find any reason to modify the 21-day Answer deadline for Windland's Motion to Stay? Pursuant to *Idaho Code* § 61-624 (see also RP 322 Interlocutory Orders; RP 326.02 Final Orders) the Commission may at any time, upon notice to the public utility affected, and after opportunity to be heard (by evidentiary hearing or written submission) rescind, alter or amend any Order or decision made by it. Anything further?

Scott D. Woodbury

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